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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Report of the sessional working group on the working methods and activities of transnational corporations on its third session

Chairperson-Rapporteur: Mr. El-Hadji Guissé

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Executive summary

In its resolution 1998/8, the Sub-Commission on the Promotion and Protection of Human Rights established in 1999, for a period of three years, a sessional working group to examine the working methods and activities of transnational corporations. At the fifty-third session of the Sub-Commission, the working group held its third session.

The working group considered papers submitted by three experts: the Chairperson-Rapporteur, Mr. Guissé, who presented a paper on the activities of transnational corporations; Mr. Eide, who presented a paper on implementation procedures for human rights guidelines; and Mr. Weissbrodt, who presented the draft guidelines themselves. After the presentation of the papers, the Chairperson-Rapporteur opened the floor for debate and contributions were made by experts and representatives of United Nations specialized agencies, non-governmental organizations and civil society.

Speakers generally welcomed the draft guidelines. There was some discussion concerning the correct title for the guidelines, with one expert proposing "draft principles". Some experts referred to the original mandate of the working group and the need to ensure that the draft guidelines and any other work of the group complied with the terms of the mandate. Some speakers questioned the strength of the draft guidelines and cautioned against introducing standards that might not meet existing human rights and labour standards. Mr. Weissbrodt welcomed all contributions and encouraged further commentary on the draft guidelines from all concerned parties including Governments, intergovernmental organizations, NGOs, trade unions and the private sector.

Many contributions referred to the appropriate coverage of the guidelines. Some speakers favoured broadening the scope of the guidelines to include domestic corporations and other business entities. Several reasons were given for this, including the difficulty in defining transnational corporations as opposed to corporations generally and the ability of transnational corporations to avoid implementing the guidelines through the use of legal structures. Speakers also noted that the activities of both transnational corporations and domestic corporations could affect the enjoyment of human rights, and so the draft guidelines should apply to both. On the other hand, speakers also recognized that transnational corporations, because of their size and power, could have particularly far-reaching effects on the enjoyment of human rights and so deserved special attention in the guidelines.

There was general agreement that the draft guidelines should be binding in some way. Speakers emphasized that States had the primary obligation to promote and protect human rights. However, given the increasing role of transnational corporations in the lives of people, and the diminishing power of the State in the face of these corporations, it would be appropriate to study different means of ensuring that transnational corporations respected human rights.

In order to encourage further comments on the draft guidelines, some speakers encouraged their wide circulation. Others believed that while comments should be encouraged, the draft guidelines should not be officially circulated until the working group, the Sub-Commission and the Commission had agreed to do so.

Most speakers called for the mandate of the working group to be extended for another three years.

Introduction

1. In accordance with its resolution 1998/8, the Sub-Commission on the Promotion and Protection of Human Rights established in 1999, for a period of three years, a sessional working group to examine the working methods and activities of transnational corporations. The 2001 session of the working group was the third and final year of this mandate.

2. The following experts were appointed as members of the working group: Mr. El-Hadji Guissé (Africa), Mr. Soo-Gil Park (Asia), Mr. David Weissbrodt (Western Europe and other States), Mr. Miguel Alfonso Martínez (Latin America), and Mr. Vladimir Kartashkin (Eastern Europe).

3. The working group held three public meetings during its third session, on 31 July, 2 August and 8 August 2001.

4. Mr. El-Hadji Guissé was elected Chairperson-Rapporteur.

5. The following members or alternates of the Sub-Commission who were not members of the working group also attended the meetings: Ms. Erica-Irene Daes, Mr. Asbjørn Eide, Mr. Alfonso Gómez-Robledo Verduzco, Mr. Fan Guoxiang, Ms. Françoise Hampson, Mr. Louis Joinet, Mr. Fried van Hoof, Ms. Iulia Antoanella Motoc, Mr. Joseph Oloka-Onyango, Mr. Godfrey Bayour Preware, Mr. Soli Jehangir Sorabjee, Ms. Zoshiko Terao, Ms. Halima Embarek Warzazi, Mr. Fisseha Yimer and Ms. Leila Zerrougui.

6. The following specialized agency was represented at the session of the working group: International Labour Organization.

7. Representatives of the following non-governmental organizations in consultative status with the Economic and Social Council also participated in the meetings of the working group, American Association of Jurists, Environmental Organisation for Argentina, Europe-Third World Centre (CETIM), Human Rights Watch, Indian Movement "Tupaj Amaru", International Commission of Jurists, International Confederation of Free Trade Unions, Lawyers Committee for Human Rights, Minnesota Advocates for Human Rights, Pax Romana and World Organisation against Torture. Individuals and organizations not in consultative status also participated in the working group's debates.

8. The working group had adopted the following agenda in 1999 for the duration of its mandate:

1. Election of officers

2. Adoption of the agenda

3. Activities of transnational corporations

4. Present standards and standard-setting activities

5. Conclusions and recommendations

6. Recommendations for the future work of the working group on the effects of the activities of transnational corporations on human rights, including the right to development and the right to a healthy environment

7. Adoption of the report of the working group to the Sub-Commission.

9. The working group had the following documents before it for discussion: (a) a working paper drafted by Mr. Guissé entitled "The realization of economic, social and cultural rights and the question of transnational corporations" (E/CN.4/Sub.2/2001/WG.2/WP.3); (b) a working paper drafted by Mr. Eide entitled "Corporations, States and human rights: a note on responsibilities and procedures for implementation and compliance" (E/CN.4/Sub.2/2001/WG.2/WP.2); and (c) a working paper drafted by Mr. Weissbrodt entitled "Draft universal human rights guidelines for companies" (E/CN.4/Sub.2/2001/WG.2/WP.1 and Add.1-3) containing the draft guidelines themselves, background information, a list of existing sources of international standards drawn on in the preparation of the draft principles, and the report of a seminar to discuss the draft guidelines held in Geneva from 29 to 31 March 2001. The working group also had before it the reports of its first and second sessions (E/CN.4/Sub.2/1999/9 and E/CN.4/Sub.2/2000/12). Finally, the working group also received during its session written technical comments on the draft guidelines from the International Labour Office.

10. The practice of prior sessions of opening all of the agenda items for discussion simultaneously was adopted. Speakers were given the opportunity to make interventions on one or more agenda items at the same time.

I. IMPACT OF TRANSNATIONAL CORPORATIONS ON THE ENJOYMENT OF CIVIL, CULTURAL, ECONOMIC, POLITICAL AND SOCIAL RIGHTS

11. The Chairperson-Rapporteur presented his working paper on the impact of the activities of transnational corporations on the enjoyment of economic, social and cultural rights.

12. Mr. Guissé began by noting that transnational companies had not to date been precisely defined. At the present state of work on this subject, no one had been able to put forward a definition acceptable to all. Three different concepts had emerged generally in the international discussions on this subject. One definition, favoured by some from Western industrialized countries, would make the definition broad enough to encompass all types of business enterprises. A second approach, favoured by the then Soviet Union and similar parties, would make a clear distinction between transnational companies and foreign investment companies. A third concept, favoured by many developing countries, would stress the relative power of the company. The size of the enterprise, measured by some agreed upon parameters, would define when a company had become transnational under this approach.

13. Transnational enterprises and corporations had clearly played an important role in globalizing the world economy. The important question was how to incorporate respect for

human rights into the actions of the transnational enterprises. It was thus incumbent upon States to regulate transnational operations in the light of their national interests and within their existing resources.

14. Mr. Guissé then noted the effects of the activities of the TNCs on a variety of economic, social and cultural rights, focusing on a few of the rights detailed in his working paper. These included community rights, such as the right to a clean environment, and individual rights, such as the rights to education, health and employment. The working paper discussed several approaches relating to the activities of TNCs and the relationship between the different rights. However, he cautioned that the treatment of this subject in his working paper was not an exhaustive catalogue.

15. The Chairperson-Rapporteur stressed that it was the effect of the activities of TNCs on individual rights that was most important. The primary objective of the working group was not to formulate voluntary or binding norms with regard to TNCs. The real mandate was to study the impact of their activities on the enjoyment of human rights and to examine the extent of States' obligations in that regard. It was only after a detailed study of those areas that it would be possible to evaluate what measures could be taken and to make recommendations and proposals for action on that basis, such as the eventual elaboration of a legal instrument, the nature and content of which still needed to be determined.

16. Illicit international activities which might involve the responsibility of States vis-à-vis other States or the international community were State crimes. According to the International Law Commission, they could be grave transgressions of human rights. Where international responsibility or liability of a State was present, violations could involve the criminal and/or civil liability of individuals or bodies within the State if those parties committed a serious crime.

17. To date, the natural subjects of international law have been States first of all. TNCs must operate within that legal framework. In other words, TNCs must comply with national law, as supplemented by international law. Mr. Guissé noted that the discussion in the working group could not go outside this framework.

18. Mr. Guissé recommended that the working group therefore consider two different frameworks: first, a preventive framework that would avoid violation of individual human rights by the activities of TNCs; it was incumbent upon the international community and States to create a body of preventive rules for that purpose. Second, a framework could be developed to address international and domestic means of ensuring that the behaviour of TNCs included a social aspect.

19. Mr. Guissé concluded by urging caution in defining the legal basis on which to challenge the responsibility of TNCs. He recognized that many of the participants would like a binding legal instrument to be developed. Yet that would depend a great deal, or perhaps even exclusively, on the good will of States. States were the only entities that could impose rules and regulations on the behaviour of TNCs. Any guidelines developed by the working group should be binding so as to avoid what had happened in the past with voluntary codes.

II. DRAFT PRINCIPLES RELATING TO THE HUMAN RIGHTS CONDUCT OF COMPANIES

20. Mr. Eide then presented his working paper on "Corporations, States, and human rights: a note on responsibilities and procedures for implementation and compliance".

21. Mr. Eide began by explaining how his paper complemented the framework proposed by Mr. Guissé in his presentation. He agreed that States held international obligations which must be borne in mind. He added the need to distinguish between the host State (where the transnational corporation was operating) and the home State (where the corporation has its headquarters). Both States had obligations, but the obligations of the host State were much more clear under present law. From the way that international law had evolved, it was clear that each State had the primary obligation to ensure that persons or parties operating within its borders complied with human rights standards. The working group was mandated to discuss the obligations of TNCs within the framework of public international law. Also, in the host State, while the obligations on the host State were clear, the capacity and sometimes the will to control the activities of TNCs properly was lacking. The attraction of foreign investments might be such that the host State was ready and willing to forgo some safeguards.

22. With respect to the legal nature of the guidelines or principles, Mr. Eide noted that Mr. Weissbrodt had done good work, but that was only one step in the process. Those types of draft guidelines could serve two purposes: first, to intensify the work of civil society by holding corporations morally responsible until binding legal standards were developed. Second, draft guidelines helped to clarify the obligation of host States as to what they should include in their own legislation, and to make such standards legally binding under their own legal systems.

23. Mr. Weissbrodt then presented his working paper, "Draft universal human rights guidelines for companies", and its background material.

24. Mr. Weissbrodt began with some preliminary comments. Last year the working group had decided to prepare legally binding standards. He believed the present draft accomplished that task. In addition, his working paper proposed a large number of possible implementation procedures for the draft standards. Those guidelines did not reflect an entirely voluntary code of conduct. He urged a careful reading of the text for those who were concerned that they were not binding enough.

25. Mr. Weissbrodt drew attention to some developments that had taken place during the past year. One was an international seminar, held in Geneva in March 2001. In which nearly all the members of the working group had participated. The findings of the seminar were to be found in addendum 3 to the working paper.

26. As a result of comments made during the last session of the working group, comments received during the March 2001 seminar and comments from many others received during the year, he had again revised the draft standards substantially, including a change of the title to "draft guidelines". There was also a new preamble which defined the background and text more fully. The guidelines themselves had been radically shortened. Each section began with a

general principle. That approach was meant to aid in the clarification and interpretation of the section. Commentaries also were added to make more specific reference to the relevant international standards.

27. Mr. Weissbrodt indicated that some of the issues that remained unresolved were whether the guidelines should apply only to transnational corporations or to all business enterprises. That subject had been much debated at the last session of the working group. No consensus had emerged. The great majority of comments he had received during the year favoured the broadest possible application of the standards. That position reflected the concern that if the guidelines were to be limited only to transnational corporations, it would be very difficult to draft a definition of transnational corporations that would be workable. An inadequate definition would permit companies to structure themselves in such a way as to circumvent the definition. Transnational corporations, however, needed to continue to be a special focus of the working group.

28. Mr. Weissbrodt commented on some of the possible methods of implementing the standards. Companies might be required to produce impact statements. Unions could use the guidelines in negotiating collective bargaining agreements with employers. NGOs could use the guidelines to review and evaluate corporate conduct. The guidelines could also be used as a standard for ethical investment. Similarly, the draft could form the basis for model legislation, and could be used by courts who might refer to them in their decisions. In some countries, the guidelines might be relevant in determining liability. In some contexts, criminal liability might be imposed for violating them. In the United Nations, treaty bodies could use them in interpreting treaty obligations. The United Nations could use them as a basis for its own procurement decisions. Country rapporteurs or thematic procedures of the Commission on Human Rights could use the draft guidelines when raising concerns in their reports. The working group or a successor group could also monitor compliance by reviewing information from NGOs and other groups.

General comments by members of the working group, other experts of the Sub-Commission and others

29. One expert member of the Sub-Commission thanked all three authors of the working papers for their hard work. It was obvious that Mr. Guissé's work was the necessary starting point. It was not possible to present draft guidelines without having first voiced the reasons for making a code of conduct mandatory. It was important for the Sub-Commission to prepare a mandatory code of conduct. Mr. Weissbrodt's work was excellent. The work of the working group should continue beyond the terms of the mandate.

30. An individual indicated he had for the last 10 years been Chair of an NGO business group in the United Kingdom. The group's objective was to persuade businesses to adopt practices which promoted and respected human rights. The challenge was to implement the guidelines in their full scope. TNCs could be vitally important for human development; they touched individuals in a more continuous and intimate way than Governments could. Corporations should therefore be more accountable. A comprehensive, authoritative text like the

draft before the working group was needed and only the United Nations could produce such a text. The current draft was very useful. The speaker looked forward to eventual mandatory guidelines but also emphasized the need for consensus.

31. An expert indicated his support for the broadest possible application of the draft guidelines to all businesses, not just transnational corporations. For example, some of the big oil corporations were national corporations, not transnational corporations. Often, the activities of national corporations were similar and had similar effects to those of TNCs.

32. Another expert supported the term "companies" rather than "transnational corporations". Sometimes "transnational corporations" were better employers and citizens than some local companies. The guidelines needed to apply to all of them. Second, the term "guidelines" implied non-binding. If the idea was that the content of the text should be binding, the name of the proposal needed to be changed. It was suggested to use the term "principles". The expert noted that the term "universal" was odd as it implied that the draft guidelines would operate only in the international sphere. The expert recommended that the term "fundamental" as more appropriate. As far as the status of the guidelines was concerned, the expert indicated she was torn between a soft law and a hard law approach. So-called soft law could be much more detailed and more binding than a binding legal instrument. In view of the need for speed, the expert suggested that there might be a clear advantage in seeking a soft law code.

33. The expert noted that the issue was what should be done with the principles. She suggested that the Sub-Commission send the instrument to all treaty bodies which would call States to account; in that case it would be helpful if the treaty bodies would report back to the Sub-Commission on their experiences. In addition, the expert recommended that the principles be sent to the World Bank, the IMF and the WTO and that they be invited to report to the Sub-Commission annually. Further, the expert noted that enforcement mechanisms were also needed

General comments by a specialized agency

34. The representative of the ILO noted that the competent bodies of the organization would certainly look with interest at the guidelines and wish to express their comments and concerns. It was hoped that the timetable for the finalization of the draft guidelines would leave room for that possibility.

35. The guidelines should recognize the ILO as the monitoring agency for labour regulations. The speaker noted the far-reaching impact of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The principles, which had been adopted within the United Nations system, were available for all ILO member States. They applied both in home and host countries. They also applied to multinational corporations themselves. The principles aimed to encourage positive contributions to economic and social progress, as well as to minimize and resolve difficulties that might arise. Implementation measures could be found in the memorandum submitted by the International Labour Office to the fifty-third session of the Sub-Commission (E/CN.4/Sub.2/2001/24).

36. The Tripartite Declaration covered many of the same areas as the draft guidelines the working group was reviewing. These included non-discrimination in employment, elimination of forced and child labour, freedom of association, employment promotion and security, wages, conditions of work and life, and industrial relations. Relevant ILO standards provided the uniform normative benchmark.

37. The Office noted that a number of specific provisions of the draft guidelines fell short of existing ILO standards.

38. Subject to the above comments, and in a spirit of contribution, the ILO representative indicated that the ILO was prepared to provide additional, more detailed technical comments on the draft guidelines, in writing, to the United Nations Secretariat. In addition, it would remain at the disposal of the working group for further consultation and discussion.

NGO comments

39. An NGO representative drew attention to the relationship between the activities of companies and human development. Nation States had traditionally dominated history but now companies were acquiring more important political powers than some States.

Comments by members of the working group and other experts of the Sub-Commission

40. A Sub-Commission expert noted that one concern was implementation. Host countries tended to be small while home countries were bigger. Transnational corporations could overwhelm a small country's enforcement mechanisms. Home countries should take more responsibility for the implementation of standards. In order to make companies comply with human rights norms, it was very important to set up an appropriate mechanism.

NGO comments

41. Another NGO speaker noted that his organization felt that the draft guidelines as currently drafted were not binding, and stated that articles 18 to 20 were problematic. He recommended that the working group request a prolongation of its mandate and that it be charged with establishing an international legal framework for surveillance and monitoring of TNC activities.

Comments by members of the working group and other experts of the Sub-Commission

42. Mr. Weissbrodt expressed his gratitude for the comments made by an NGO representative on article 20. His intent in article 20 had been to guarantee that the cited standards would be minimum standards for company compliance. If companies wished to impose higher standards, they were free to do so. If that was not clearly expressed he would be happy to clarify article 20 to make this point more clear. Another expert noted that the NGO comments on articles 18-20 were based on a misunderstanding of the text.

NGO comments

43. Another NGO representative felt that the working group had not yet found its path. Transnational corporations had their own specificities. They might be subject to one or more jurisdictions. This was one of the central problems that should be studied by the working group. Another aspect of TNCs was their enormous power. They adjusted to changes in the beliefs and social patterns of human beings. All of these set them apart from national companies. For the time being there were no international tribunals which could regulate transnational corporations. Binding law required two essential characteristics: first, it must be complied with by all and second, it must be legally enforceable in a court.

44. The working group should fulfil all the elements of the mandate given to it by the Sub-Commission in paragraph 4 of its resolution 1998/8, especially items (d) and (f). It should make recommendations and proposals to the international community and States in order (a) to place TNCs within the framework of international and national human rights norms currently in force (civil, cultural, economic, political, social and environmental rights); (b) to ensure that TNCs answer to the competent jurisdictions in case of violation of these norms. By its recommendations and proposals, the working group should also consider ways to fill the normative and legal gaps existing in this matter.

45. Another NGO speaker indicated that he represented an indigenous group. He noted that no one could escape the effects of TNCs. According to a report published in 1999 by the United Nations Conference on Trade and Development, the 100 largest TNCs together had assets of $1.8 billion and sold products worth $2.1 billion, while employing 6 million persons in their subsidiaries; 90 per cent of the top 100 companies are from the West. His group recommended that the experts (a) place greater emphasis on the overall negative effect of TNCs, particularly on the right to development; (b) define the property rights and economic rights of TNCs; (c) investigate the illegal transfer of capital, in the form of interest and profit-taking, from poor to rich countries; (d) determine the legal nature of mergers between firms and banks and media leading to large monopolies; (e) consider the regulation of international financial institutions; (f) evaluate the involvement of TNCs in corruption; and (g) evaluate the activities of TNCs on the human rights of indigenous peoples.

Comments by members of the working group and other experts of the Sub-Commission

46. Another Sub-Commission expert noted that while there had been advances, the mandate of the working group had not yet been completely fulfilled. The group had been tasked with examining the activities and impact of TNCs on human rights. The group had also been asked to analyse the compatibility of the various human rights instruments with the various investment agreements. She did not think it had done either. The expert also questioned whether the draft guidelines document was included in the mandate of the working group as it purported to apply to all companies, not just TNCs. Finally, the expert noted that the draft guidelines were not binding.

47. Mr. Weissbrodt, responding to several of the comments made by NGO representatives and others, noted that there was a high degree of consistency in the objectives expressed, namely to ensure that the activities of corporations and transnational corporations promoted and protected human rights. Now the question was how to achieve that objective. He believed that the mandate of the working group certainly encompassed the draft that he had prepared. Mr. Weissbrodt acknowledged that there were aspects of the mandate that had not been accomplished. However, if the working group dealt with only transnational corporations, those entities would be able to use legal tactics to avoid implementing the guidelines. There was no agreed definition of transnational corporations that would avoid this problem. Therefore, in order to fulfil the task in paragraph (d) of the working group's mandate, there was a need for legally binding standards that applied to all companies.

48. Another Sub-Commission expert noted that while the working group was mandated to evaluate the impact of TNCs - which was of course addressed in the working paper by Mr. Guissé - it should also look at the procedures by which TNCs could best be held accountable. On the issue of binding and non-binding standards and how the standards could be made binding, for the time being the direct responsibility of TNCs was difficult to prove. On the other hand, it was possible to prove the direct responsibility of States, particularly host countries. But, as another expert noted, States were sometimes too weak or too focused on attracting investment and could not stand up to TNCs. For that reason, ways must be found to implement the guidelines. There had been developments in this area in the Organization for Economic Cooperation and Development as well as the European Union. These were at an early stage. The draft guidelines could be a step in that process. The working group needed to determine what the other steps in that process were and to look at the compatibility of the guidelines with existing standards. In that regard, it was important to ensure that the guidelines did not fall below existing standards. The expert agreed the mandate of the working group should be extended.

49. Another expert addressed the question of the mandate of the working group. If the working group were confined only to transnational corporations, it could only examine issues particular to TNCs and not issues that affected all corporations. In order to examine comprehensively the conduct of all companies, it would be necessary to deal with both. Second, the expert noted that TNCs were already using company structures to avoid liability, which was an added reason for the guidelines to apply to all corporations. Third, there was a need to ensure that companies were effectively called to account.

50. Another expert noted that national companies were already under national jurisdiction and within national borders. TNCs were the ones that carried out their activities beyond borders. This was why another instrument should be added to the international framework.

51. Another expert was in favour of the draft guidelines containing some mandatory standards for all companies. At the same time, the working group needed to recognize that many of the provisions would be unacceptable to companies. The expert believed the draft guidelines should apply to all companies. However, it would be desirable to include definitions of transnational corporation, national company, etc., in the document. In some cases, there might

be different sets of rights applicable to certain categories of companies. He also thought that the draft guidelines should be sent to parties both inside and outside the United Nations system for comment. There would be a better chance of improving the content of the draft and to draft a document which would ultimately be acceptable to everyone.

52. Another expert commended the excellent work done on a difficult topic. Unfortunately, there was no full-fledged enforcement mechanism available internationally applicable to non-State actors. On the subject of binding standards, if the working group took the position that the standards were already binding, the question arose of how to focus on the practical issues. This was not a matter of principle, but of strategy and tactics. One position was that it would be necessary to draft a so-called soft law document, because a hard-law document would be impractical under the circumstances.

53. Another expert commented that non-binding "recommendations" in a document such as the present draft would not be effective. There must be some sanctions. Also, he noted that it would not be wise to try to distinguish between transnational and national companies. The expert strongly recommended that the right to self-determination not be included in the draft guidelines owing to its complicated nature.

NGO comments

54. A representative from an NGO noted that human rights violations were increasingly of a global nature. He noted that the accountability of non-State actors was one of the most important issues needing to be to addressed. Private businesses had expanded over the years. Substandard working conditions existed, including exposure of workers to toxic chemicals. Until recently almost all global manufacturers took no responsibility for their subcontractors, which were often located in Asian and other developing countries. He noted an urgent need for practical enforcement. He felt that a variety of stakeholders must be engaged for the working group to be effective. Some of the most basic human rights documents had started out as the same type of soft law, including the Universal Declaration of Human Rights itself. The working group should be encouraged to find further implementation procedures. He identified three areas for further research: first, the examination of methods used by NGOs and independent organizations to monitor corporate human rights violations; second, the creation of a forum within the United Nations; third, subsequent papers to be requested by the Sub-Commission.

55. Another NGO representative indicated that today most businesses paid at least lip service to human rights; however, not in countries where they invested. The representative saw the draft guidelines as a positive step towards developing binding standards. Some corporations might argue that they would be at a competitive disadvantage if they adhered to standards when others did not. The extension of the working group's mandate would also enable it to build upon paragraph (a) of its mandate to identity and examine the effects of TNC activities.

56. A representative from another NGO noted that she had served as Rapporteur at the March 2001 seminar and she wished to summarize the key findings of the seminar. Forty-six people, including five members of the Sub-Commission, had participated, representing a diverse cross-section of business and academic experts, non-governmental organizations and United Nations officials. Key findings included the need to maintain a broad focus in

developing standards for companies of all kinds, not only transnational corporations; to develop strong implementation procedures; and to move quickly to a product which could be used in the field and in human rights advocacy. The NGO representative strongly supported a three-year extension to the working group's mandate, an updating of all three working papers, and circulation of all three papers for comments. It would be extremely important to have a consensus-building process which was open and transparent to all interested groups in order to facilitate the success of the working group.

57. Another NGO representative indicated that his organization still believed that States retained the main obligation for the enjoyment of human rights, but noted that companies had obligations too. The draft guidelines provided a remarkable base. However, he drew the attention of the working group to the following. First, the draft guidelines did not expressly mention the Convention against Torture and Other, Cruel, Inhuman and Degrading Treatment or Punishment, yet company security guards had been accused of such practices. Second, the draft guidelines were also silent on required disclosure of security guard arrangements. There was at present a lack of transparency in contracts between private corporations and private security companies. Third, the working group should further develop the draft document with regard to implementation measures. The group should consider an independent monitoring mechanism. Fourth, the representative also favoured applying the standards to all companies. That would help guarantee a level playing field and would put States and host States back into the equation.

58. In recent years, another NGO representative noted, considerable attention had been given to corporations and their failure to respect human rights in countries where they carried out their activities. Transnational corporations were often notorious. The extent and complexity of their operations made them difficult to regulate. Assessing the extent to which international standards were directly binding on companies was of crucial importance. The NGO representative welcomed the endeavours of the working group to clarify the international human rights obligations of companies, whether transnational or national. The representative acknowledged that TNCs had specific characteristics that might require specific attention. However, national companies also violated human rights. Human rights were universally recognized, thus enforcement must be universal. The NGO representative preferred a binding instrument, rather than soft law. He acknowledged, however, the difficulty of pursuing that goal immediately; it should, however, be the ultimate goal. The level playing field argument was forceful and convincing. As mentioned by one of the Sub-Commission's experts, experience should be drawn from sources such as the United Nations Standard Minimum Rules for the Treatment of Prisoners.

III. RECOMMENDATIONS FOR FUTURE WORK OF THE WORKING GROUP

59. The working group then took up the subject of its future work.

60. The group recommended that its mandate be extended for a further three-year term and that each of the authors of the working papers be encouraged to update his work for the next session.

61. There was a general consensus in the working group on the need for the norms concerning transnational corporations to be enforceable in order to be effective and that the primary obligations of States in that area must also constantly be borne in mind. It was recognized that there were different possible methods for achieving this. It was agreed that much more discussion was needed to identify the best method or methods for the implementation of standards.

62. It was also noted that the sessions of the working group were public and open-ended. All interested parties were encouraged to attend and participate in future sessions.

IV. ADOPTION OF THE REPORT

63. The present report was adopted by the working group at its meeting on 8 August 2001.